

ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

1.1 The Australian Greens support the committee's report and recommendations, however, wish to make some additional comments on two aspects of the Bill.

Alternative state regimes

1.2 The Greens are concerned by the scope of the amendments relating to alternative state right to negotiate regimes. The primary concern is the extent of the retrospective validation of the South Australian section 43 determinations in relation to mining and opal mining.

1.3 The Greens note the submission of HREOC on this point. A key concern is that the amendments provide for retrospective validation not just in respect of validating the grants of the tenements issued by South Australia, pursuant to its alternative provisions, but validates the determinations made by the Commonwealth under section 43 and therefore continues the South Australian provisions in operation.

1.4 The problem with continuing the South Australian provisions is that they appear to not meet the requirements for a valid determination under section 43, either as it is currently, or as the section would be amended by the Bill.

1.5 The Greens agree with HREOC's statement in its submission that retrospective validation:

...has served to undermine Indigenous confidence in the Act, and undermines public confidence in Parliament's respect for and commitment to the rule of law. It is wrong in principle that acts done in contravention of the law, and that adversely affect the rights and interests of others, are later retrospectively validated to avoid the consequences of the resulting invalidity.¹

1.6 While the Greens agree that the invalidity of future acts done under the South Australian regime should be rectified, the Bill should not validate the invalid South Australian regime itself and the amendments should be as narrow in scope as possible.

Amendments relating to prescribed bodies corporate

1.7 The Australian Greens agree with the committee that there is a need to establish a mechanism for providing a default PBC in certain circumstances. However, the Greens note the concerns expressed by HREOC in its submission.

1 *Submission 10*, p. 5.

1.8 Essentially there is a concern that the regulations rather than the Court can determine not just the type of PBC to be established, but the actual body corporate that will be the PBC in certain circumstances. Similarly the Bill allows for the regulations to allow for a person or body other than the Court to determine the PBC that will replace the PBC originally determined by the Court. As the committee report notes, HREOC argues this is a:

...radical departure from the existing legal policy by which the determination of the trust or agent PBC is exclusively within the jurisdiction of the Court.²

1.9 The Greens agree with HREOC that the Court is the appropriate body to determine which body corporate will hold the native title, particularly given that:

Recognised native title is all that remains to contemporary traditional owners of the legal title to land that their ancestors had prior to the acquisition of sovereignty by the Imperial Crown.³

1.10 The Greens note the statements by FaCSIA that it was the intention of the Government that the Court would continue to determine PBCs. In light of those comments the Greens cannot see the need for the amendments in the Bill to allow for other persons or bodies to have that role.

Senator Rachel Siewert
Australian Greens

2 *Submission 10*, p. 11.

3 *Submission 10*, p. 11.